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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/659,597

09/09/2003

Richard H. Chilibeck

1115-015/JRD

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02/17/2004

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EXAMINER

CECIL, TERRY K

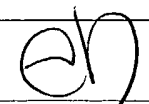
ART UNIT

PAPER NUMBER

1723

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|-----------------------|---|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/659,597 | CHILIBECK, RICHARD H. | |
| | Examiner | Art Unit |  |
| | Mr. Terry K. Cecil | 1723 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/908,682.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims is indefinite because it is unclear how the cross sectional area of the liquid effluent flow path in the vicinity of the sedimentary deposition tank inlet can be less than the cross-sectional area of itself.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Erwin (U.S. 2,348,167). Erwin discloses an apparatus that includes a “surge tank” 2, having an inlet A; an outlet D and air outlet C communicating with an air conduit bypass line M; a “sedimentary

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deposit" tank 1 having an inlet communicating with the tank 2 outlet, and an outlet G communicating with the air bypass conduit via lines 6 and M [as in claim 1]. It is the examiner's position that because of the way in which the claim is drafted, the vacuum pump and suctioning device are not positively recited structures of the apparatus and merely describe the intended use. Also, elements in the last 7 lines of the claim fail to limit since such only describes the intended use. Also, elements listed within phrases beginning with "for" in sections (a) through (c) fail to structurally limit the claim beyond the elements positively recited.

The limitations of claims 2-8 are also met since Erwin discloses valves E and H (of a throttle type) that have the ability to control fluid flow through the separator area and which are positioned in pipes that inherently have sizes that constrict the flow therethrough.

5. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Dittler (U.S. 691,365). Dittler discloses a "surge" tank 2 and downstream settle tanks, each tank in the system having inlets, outlets, and an air outlet communicating with an "air bypass line" n [as in claim 1], wherein the tank include baffles to inhibit the flow of effluent through the system and interconnecting conduits having a size that would inherently inhibit flow therethrough [as in claims 2-3, and 5-6].

6. Claims 1 and 11 are rejected under 35 U.S.C. 102(X) as being anticipated by Trawoger et al. (U.S. 5,613,851). Trawoger teaches a first tank (surge tank) including an inlet and an outlet

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communication with a separator 21 being unattachable therewith [as in claim 11], wherein both said tanks are in communication with a suction pump [as in claim 1].

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erwin in view of Lee et al. (U.S. 5,700,378). Lee teaches a needle valve 52 [as in claim 9]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the needle valve of Lee to replace either of the valve L and H of Erwin, since Lee teaches the benefit of controlling the flow of the heavier weight fluid—as desired by Erwin.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trawoger in view of Ralls et al. (U.S. 5,885,076). Claim 12 adds the limitation of downstream filtering. Such is taught by Ralls. Ralls teaches filters 87, 88. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the downstream filtering of

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Ralls in the invention Trawoger, since Ralls teaches the benefit of additional treatment of dental waste.

10. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (571) 272-1138 at the Carlisle campus in Alexandria, Virginia for any inquiries concerning this communication or earlier communications from the examiner. Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:30a to 4:30p, on at least four days during the week M-F.
- Wanda Walker, the examiner's supervisor, can be reached at (571) 272-1151 if attempts to reach the examiner are unsuccessful.
- The Fax number for this art unit for official faxes is 703-872-9306.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mr. Terry K. Cecil
Primary Examiner
Art Unit 1723

TKC
February 8, 2004